

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

September 23, 2011

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Hawaii

Request for Approval of Special Installment Agreement for Payment of
Retroactive Rent under General Lease No. S -4665 to DMS Diesel Repair, LLC,
Waiakea, South Hilo, Hawaii, Tax Map Key: 3rd/2-2-37:98.

LESSEE:

DMS Diesel Repair, LLC, a Hawaii Limited Liability Company.

LEGAL REFERENCE:

Board policy of January 28, 2000, Item D-19, as amended.

LOCATION AND AREA:

Portion of Government lands identified as Lots 6 & 8, Block 40, Waiakea Industrial Lots,
situated at Waiakea, South Hilo, Hawaii, identified by Tax Map Key: 3rd/2-2-37:98,
consisting of approximately 44,374 square feet, as shown on the attached map labeled
Exhibit A.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

LEASE CHARACTER OF USE:

General industrial purposes.

TERM OF LEASE:

55 years, commencing on 8/28/1980 and expiring on 8/27/2035. Last rental reopening
was August 28, 2010; next rental reopening is scheduled for August 28, 2020.

ANNUAL RENTAL:

From August 28, 2010 to August 28, 2020: \$40,000.00.

From August 28, 2000 to August 28, 2010: \$22,800.00.

DCCA VERIFICATION:

Place of business registration confirmed:	YES <u>X</u>	NO <u> </u>
Registered business name confirmed:	YES <u>X</u>	NO <u> </u>
Good standing confirmed:	YES <u>X</u>	NO <u> </u>

REMARKS:

By letter dated July 6, 2011, the president of DMS Diesel Repair, LLC, Derek F. Cabarloc, requested an installment payment plan to pay off retroactive rent in the amount of \$12,900.00 incurred as a result of the most recent rental reopening under the lease. A copy of Mr. Cabarloc's letter is attached as Exhibit B.

The annual lease rent in the ten-year period ending August 28, 2010 was \$22,800.00. In 2010, DLNR hired an appraiser to determine the rent for the ensuing ten-year period, and the annual rent was established at \$44,400.00. DLNR notified Lessee of the new rent by letter dated March 24, 2010. Lessee disputed the new rent and Lessee and the State proceeded to arbitration to resolve the dispute. By memorandum dated March 22, 2011, the arbitration panel set the new rent at \$40,000 per year.

The terms and conditions of the lease did not specifically require the Lessee to pay disputed rent during the arbitration process. Accordingly, retroactive rent in the amount of \$12,900.00 accrued in the interim. On July 7, 2011, Land Division received payment of \$12,000.00 of which \$10,000.00 was applied to rent owed and \$2,000.00 was applied to the retroactive rent.

Under Lessee's proposal, Lessee would pay \$1,000.00 of the retroactive rent upon the Board's approval of the installment plan. Lessee would pay the balance of \$9,900.00 over 12 month's at 7% interest per annum with monthly payments of \$856.61 and a final payment of \$856.61, which would fully amortize the retroactive rent as indicated in the schedule attached as Exhibit C. Additionally, Lessee would continue to make quarterly rental payments of \$10,000.00.

With the exception of retroactive rent, the Lessee is compliant with all lease terms and conditions including rent, insurance and performance bond. A notice of default for non-payment of regular and retroactive rent was issued on June 30, 2011. Lessee timely petitioned Land Division for acceptance of an installment plan for the retroactive rent. The last rental reopening occurred on August 28, 2010; next rental reopening is scheduled for August 28, 2020. There are no existing special installment agreements on the subject lease. There are substantial improvements on the property that will revert State ownership upon termination of the lease.

The interest rate and amortization schedule have been reviewed by Land Division's Fiscal Office for accuracy.

RECOMMENDATION:

Staff is recommending that the Board accept Lessee's proposal for paying the retroactive rent on an installment basis on the conditions cited above which are by this reference incorporated herein, and further subject to the following terms and conditions:

1. The total amount due is \$10,900.00.
2. Lessee shall pay to DLNR a down payment of \$1,000.00 within thirty (30) days of Board approval of the special installment agreement. Thereafter, commencing on September 1, 2011, Lessee shall make twelve (12) consecutive monthly installment payments of \$856.61 and a final payment of \$856.61 including interest to DLNR on or before the first business day of each month.
3. The interest rate applicable to the payments under the installment plan is 7% per annum. Interest will begin accruing as of September 1, 2011.
4. Prepayments may be made without penalty.
5. Any delinquent installment payment will be charged a \$50.00 late fee plus 1% interest for any month or portion thereof a payment remains unpaid. In addition, a late installment payment shall constitute a default under the lease. If such default is not cured within 60 days after delivery to Lessee of a notice of default, the lease shall be subject to forfeiture in accordance with its terms and conditions.
6. Land Division's Fiscal Office shall bill Lessee monthly for installment payments as well as regular quarterly rent.

Respectfully Submitted,



Gordon C. Heit
Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson



EXHIBIT A

TMK: 3RD/2-2-37:98

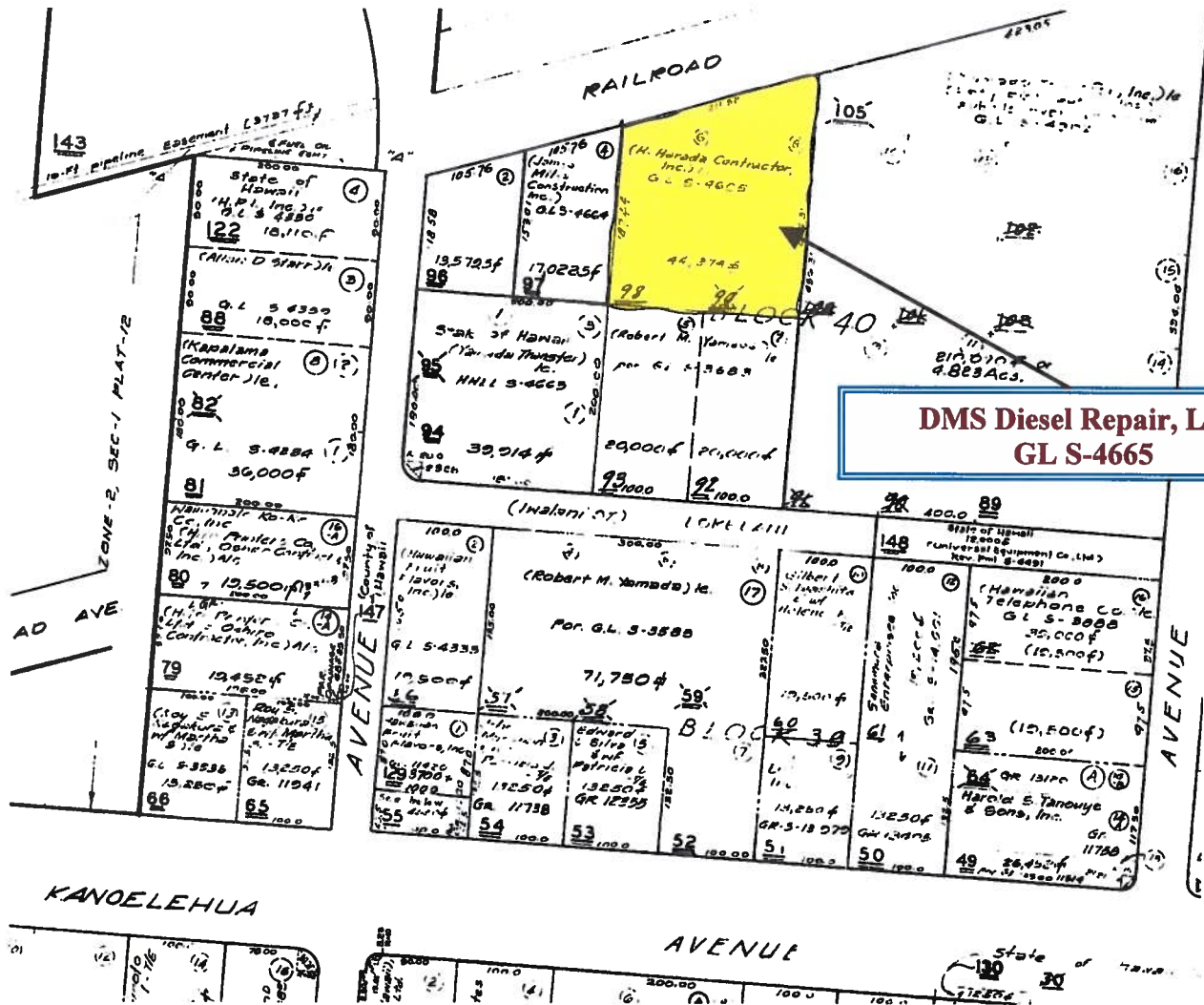


EXHIBIT B

DMS DIESEL REPAIR, LLC
24 RAILROAD AVE.
HILO, HAWAII 96720
JULY 6, 2011

STATE OF HAWAII
DEPT. OF LAND AND NATURAL RESOURCES
LAND DIVISION
PO BOX 621
HONOLULU, HI 96809

2011 JUL 12 P 12:06

RECEIVED
LAND DIVISION
HILO, HAWAII

Dear Mr. Russell Y. Tsuji,

Subject: General Lease No. S-4665; Waiakea, S Hilo, Hawaii;
TMK: (3) 2-2-37:98

We receive a notification of Retro-Rent from 8/28/10 to 5/27/11 of \$12900.00
I'm requesting for an installment payment plan, of \$1000.00 per month until payment is paid in full for the Retro-rent payable to the Dept. of Land and Natural Resources. I am also requesting for a reduction on our lease land payment.

The reason for my request is I am unable to pay such a large amount for the Retro-rent and the land lease all at once, due to the bad economy. Our business is suffering but not due to a lack of customers, it is due to a lack of customers not paying they're bill and late payments. Where once payments from customers were always timely we now find ourselves constantly calling customers, sending out past due notices and charging finance charges. They'd rather be late and pay the finance charge, rather than pay their bill or pay on time. It's become a circle of I can't pay you if I don't get paid. I never wanted to or never thought that I would be in such a circle but with the way the economy has become I find myself at times in this same circle as my customers and so many more others. I will try my best to take care of my Retro-rent bill for it weighs heavy on my shoulders. If I am able to pay it off sooner, I will. My land lease has also doubled in its amount and my business is bring in less revenue. Is there anyway possible to bring the amount of the land lease down?

Please consider my request. I need this property to continue operating my business so that I can provide for my family and provide for my workers and their families. Today's economy has brought a lot of tragedy to this state and the nation. I am trying my best not to add to or become one of the tragedies to the economy. Again, I humbly ask that you consider the payment plan and the reduction of my land lease. Thank You

If you have any questions regarding this request, please feel free to contact me at my office (808)935-6484 or my cell phone (808)960-2707.

cc: Gordon Heit ✓

Best Regards,



Derek F. Cabarloc
President
DMS Diesel Repair, LLC

General Lease No. S-4665
DMS Diesel Repair, LLC

Amortization table for \$9,900.00 borrowed on Sep 01, 2011

Month / Year	Payment	Principal Paid	Interest Paid	Total Interest	Balance
Oct. 2011	\$856.61	\$798.86	\$57.75	\$57.75	\$9,101.14
Nov. 2011	\$856.61	\$803.52	\$53.09	\$110.84	\$8,297.61
Dec. 2011	\$856.61	\$808.21	\$48.40	\$159.24	\$7,489.40
Jan. 2012	\$856.61	\$812.93	\$43.69	\$202.93	\$6,676.47
Feb. 2012	\$856.61	\$817.67	\$38.95	\$241.88	\$5,858.80
Mar. 2012	\$856.61	\$822.44	\$34.18	\$276.05	\$5,036.36
April 2012	\$856.61	\$827.24	\$29.38	\$305.43	\$4,209.13
May 2012	\$856.61	\$832.08	\$24.55	\$329.99	\$3,377.07
June 2012	\$856.61	\$836.92	\$19.70	\$349.68	\$2,540.15
July 2012	\$856.61	\$841.80	\$14.82	\$364.50	\$1,698.35
Aug. 2012	\$856.61	\$846.71	\$9.91	\$374.41	\$851.65
Sept. 2012	\$856.61	\$851.65	\$4.97	\$379.38	\$0.00

Location of article:

<http://www.bankrate.com/calculators/mortgages/loan-calculator.aspx>